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THE TAX LAWYER

Donald Rumsfeld Goes Tax Protester On IRS, But Should Aim At Congress

Donald Rumsfeld was always direct. Now his signature bluntness is aimed at the IRS, although Congress arguably deserves his ire even more. In a letter to the IRS, he complains bitterly about our tax code. Its complexity is a “sad commentary on governance in our nation’s capital,” the former Defense Secretary says.

Although he and his wife both signed the returns as required under penalties of perjury, he gives a harsh confession:

“The tax code is so complex and the forms so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know, and I suspect a great many Americans cannot know, whether or not their tax returns are accurate.”

Is Mr. Rumsfeld a tax protester? Not really, but even if you can call it that, he’s clearly right. Cleverly, he didn’t alter the penalties of perjury line on his Form 1040. He also didn’t write something under this signature like “without recourse” or “unlawful.” His who’s on first letter to the IRS was separate, just complaining that the tax code is so complex that neither he nor his wife know if it is right.

A line of case law considers whether altered tax returns are actually “returns” for purposes of filing deadlines, the statute of limitations, and more. In that sense, Mr. Rumsfeld remains cagey. He stopped short of saying he didn’t even look through the return after the accountants prepared it. Of course, he’s right that most people cannot hope to understand a complex return, or often even a simple one.

The last decade gave us the [Timothy Geithner](#) defense to tax return mistakes (“TurboTax made me do it!”). Then in the aftermath of the mortgage and foreclosure meltdown, officials at big financial institutions popularized *robo-signing* of loan or foreclosure documents. The parallel with tax returns is the robo-signer defense: “I didn’t read my tax return—I just signed it.”

Besides, most tax returns are not self-prepared. A majority of people have someone do their taxes. Most members of Congress don’t do their own. With over half our returns prepared by someone else, it is no wonder that many taxpayers assume their returns are written in an unintelligible runic script. Even lawmakers can’t do their own.

We are supposed to *read and understand* the return, and we must sign under penalties of perjury. We *should* review it before signing and alert the return preparer to any mistakes we discover. But how often does this happen?

The situation seems worse today than ever before, because of the vast and unending complexity of our moribund tax system. Electronic filing doesn’t help. Consider the simple mechanics. There is a marked contrast between the mechanics of paper vs. electronic filing. With a traditional paper filing, at least the taxpayer *signed* the return before mailing. That imports a certain amount of due diligence.

Sure, they could sign without reading. But with e-filing, the client may not even *see* the return. The client *should* review the return, and the return preparer should *ask* the client to verify that all figures are correct, the correct boxes are checked, and so on.

But even a signature in the traditional sense may be lacking. Instead of *physically* signing the return, electronic filing is, well, electronic. The taxpayer and the preparer enter numbers. Before filing, the taxpayer signs a signature authorization form ([Form 8879](#)) saying the taxpayer has reviewed the electronic return, it is accurate, etc. In the old days, at least the return had to be printed out and the taxpayer had to sign.

Is the IRS responsible for part of the complexity? Sure. But the tax code is Congress’ baby. Perhaps it deserves to be thrown out to make room for a brand new one.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.